IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1021 OF 1993

Sushila Indubhai Patel
C/o.Shri Ramanbhai H. Patel
109, Jawahar Nagar, Ground
Floor, Road No.1,
Goregaon (West),
Bombay - 400 062. .. Petitioner.

V/s.

1. Union of India, through
the Secretary, Ministry
of Finance, Government
of India, North Block,
Central Secretariat,
New Delhi - 110 001.

2. V.D. Wakharkar,
Commissioner of Income-tax,
City X, Bombay, having
his office at Mahalaxmi
Chambers, Mahalaxmi,
Bombay - 400 034. .. Respondents.

Mr.B.V. Jhaveri for the petitioner.

None for the respondents.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 13TH AUGUST, 2007.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

1. In this petition, challenge is to the order of the Commissioner of Income Tax dated 28th January, 1993 passed under Section 273A of the Income Tax Act, 1961 (‘Act’ for short). By the said order, the C.I.T. has declined to waive interest/penalty levied against the petitioner/ assessee under various provisions of the Act.

2. The assessment years involved herein are A.Y. 1979-80 and A.Y. 1987-88.

3. Prior to A.Y. 1975-76, the petitioner was assessed to income tax regularly. On 17th August, 1975, the petitioner went to America. During financial year 1977-78 and 1978-79, the petitioner visited India for a couple of months. On 7th June, 1979, the petitioner once again went to America and returned to India after about 9-1/2 years on 31st January, 1989.

4. On 24th February, 1989, the petitioner paid self-assessment tax for A.Y.1979-80 to 1.Y.1988-89 on the taxable income of Rs.17,399/-, Rs.24,650/-, Rs.24,691/-, Rs.25,527/-, Rs.26,083/-, Rs.27,635/-, Rs.29,993/-, Rs.38,404 and Rs.46,353/- respectively. Accordingly, returns of income were also filed. On 27th February, 1989, the assessee filed an application under Section 273A of the Act before the C.I.T. seeking waiver of interest and penalty imposable under various provisions of the Act in the aforesaid assessment years.

5. The assessing officer thereupon issue notices under Section 148 of the Act and thereafter completed assessments by accepting the return filed

by the assessee. The assessing officer levied interest under Section 139(8), Section 215, Section 217 and after initiating proceedings levied penalty under Section 271(1)(a), 271(1)(b) and 271(1)(c) of the Act.

6. In response to the application for waiver of interest / penalty filed on 27th February, 1989, the CIT issued notice belatedly on 30th September, 1992 and by the impugned order dated 28th January, 1993 rejected said application on the ground that the petitioner has neither paid the interest nor made any satisfactory arrangement for payment of interest. The CIT concluded that since there was undue delay in submission of return of income, there was delay in payment of self-assessment tax and, therefore, not a fit case for exercising jurisdiction under Section 273A of the Act. Challenging the aforesaid order of the CIT, the present petition is filed.

7. On 8th June, 1993, this petition was admitted and interim relief was granted in terms of prayer clause (c) of the petition thereby restraining the respondents from taking any steps or proceedings to implement the order dated 28th January, 1993.

8. To complete narration of facts, we may note that after filing of the petition, the CIT (A) by an order dated 22nd February, 1995 has deleted penalty levied under Section 271(1)(a) for A.Y. 1980-81 to a.y. 1988-89. Similarly, by order dated 22nd February, 1995 the CIT (A) has deleted penalty levied under Section 271(1)(c) of the Act for A.Y. 1980-81 to A.Y. 1985-86.

9. From the impugned order, it is seen that the waiver application of the petitioner has been rejected only on the ground that the assessee has neither paid the interest nor made any satisfactory arrangement in respect thereof. From the application made by the petitioner, it is seen that during the relevant assessment years the returns of income could not be filed within the stipulated time, because, the petitioner was outside India. Immediately after returning to India, the petitioner had filed returns of income voluntarily for all the years. It is pertinent to note that the income derived by the petitioner comprised mainly interest from FDR and dividend income.

10. It is not in dispute that the return of income as filed have been accepted in toto without making any additions. In the application for waiver of interest / penalty filed under Section 273A of

the Act on 27th February, 1989 the assessee had specifically stated that she had kept the amounts in bank as Fixed Deposit (FDR) and specifically undertook to make arrangement for payment of taxes, if any, remaining payable to the satisfaction of the CIT. While disposing of the said application belatedly on 28th January, 1993, the CIT has not even ascertained as to whether said FDR's were still available as security. It is contended by the assessee that on 16th June, 1993 while filing return for A.Y.1992-93, the Assessing Officer was informed that the petitioner had Fixed Deposits of substantial amount for recovering unpaid interest chargeable under the Act. It is also pertinent to note that the penalty levied under Section 271(1)(a) for A.Y. 1980-81 to A.Y.1988-89 have been deleted by the CIT (A) and the same is accepted by the revenue. Similarly, penalty levied under Section 271(1)(c) of the Act has also been deleted by the CIT (A) for A.Y. 1980-81 to A.Y. 1985-86.

11. In these circumstances, we are of the opinion that CIT was not justified in rejecting the application for waiver of interest/penalty on the ground that the assessee had not made satisfactory arrangements for payment of tax.

12. Accordingly, the petition succeeds. The

impugned order dated 28th January, 1993 is quashed and set aside and it is held that the assessee is entitled to waiver of interest / penalty as claimed in the application dated 27th February, 1989.

13. During the pendency of the Writ petition, the recovery of interest / penalty was stayed by this Court. However, it is claimed that even after the stay granted by this Court on 8th June, 1993, the petitioner on 16th March, 1996 has paid the interest levied under Sections 139(8) and 215 of the Act for A.Ys. 1980-81 to 1988-89. Since the revenue could not appropriate the said amount on account of the stay granted by this Court, the petitioner would be entitled to refund of the said amount without any interest.

14. Rule is made absolute in terms of this order with no order as to costs.

sd/-

(F.I. REBELLO, J.)

sd/-

(J.P. DEVADHAR, J.)